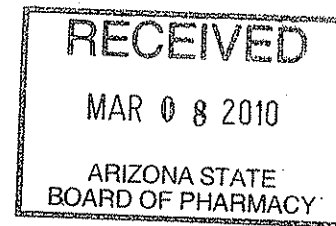


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8  
9 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

10 In the Matter of

11 **BRIAN TYBOR,**

12 Holder of License No. S016773  
As a Pharmacist  
13 In the State of Arizona

Board Case No. 10-0032-PHR

**CONSENT AGREEMENT  
FOR SURRENDER**

14  
15 In the interest of a prompt and judicious settlement of this case, consistent with the  
16 public interest, statutory requirements and the responsibilities of the Arizona State Board  
17 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Brian Tybor ("Respondent"),  
18 holder of Pharmacist License Number S016773 in the State of Arizona, and the Board  
19 enter into the following Recitals, Findings of Fact, Conclusions of Law and Order  
20 ("Consent Agreement") as a final disposition of this matter.

21 **RECITALS**

22 1. Respondent has read and understands this Consent Agreement and has had  
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the  
24 opportunity to discuss this Consent Agreement with an attorney.  
25  
26

1           2.     Respondent understands that he has a right to a public administrative  
2 hearing concerning the above-captioned matter, at which hearing he could present  
3 evidence and cross examine witnesses. By entering into this Consent Agreement,  
4 Respondent knowingly and voluntarily relinquishes all right to such an administrative  
5 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or  
6 any other administrative and/or judicial action, concerning the matters set forth herein.

7           3.     Respondent affirmatively agrees that this Consent Agreement shall be  
8 irrevocable.

9           4.     Respondent understands that this Consent Agreement or any part of the  
10 agreement may be considered in any future disciplinary action by the Board against him.

11          5.     Respondent understands this Consent Agreement deals with Board  
12 Complaint No. 3716 involving allegations of unprofessional conduct against Respondent.  
13 The investigation into these allegations against Respondent shall be concluded upon the  
14 Board's adoption of this Consent Agreement.

15          6.     Respondent understands that this Consent Agreement does not constitute a  
16 dismissal or resolution of any other matters currently pending before the Board, if any,  
17 and does not constitute any waiver, express or implied, of the Board's statutory authority  
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19          7.     Respondent also understands that acceptance of this Consent Agreement  
20 does not preclude any other agency, subdivision, or officer of this State from instituting  
21 any other civil or criminal proceedings with respect to the conduct that is the subject of  
22 this Consent Agreement.

23          8.     Respondent acknowledges and agrees that, upon signing this Consent  
24 Agreement and returning this document to the Board's Executive Director, he may not  
25 revoke his acceptance of the Consent Agreement or make any modifications to the  
26

1 document regardless of whether the Consent Agreement has been signed by the  
2 Executive Director. Any modification to this original document is ineffective and void  
3 unless mutually agreed by the parties in writing.

4       9.     This Consent Agreement is subject to the approval of the Board and is  
5 effective only when accepted by the Board and signed by the Executive Director. In the  
6 event that the Board does not approve this Consent Agreement, it is withdrawn and shall  
7 be of no evidentiary value and shall not be relied upon nor introduced in any action by  
8 any party, except that the parties agree that should the Board reject this Consent  
9 Agreement and this case proceeds to hearing, Respondent shall assert no claim that the  
10 Board was prejudiced by its review and discussion of this document or any records  
11 relating thereto.

12       10.    If a court of competent jurisdiction rules that any part of this Consent  
13 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
14 shall remain in full force and effect.

15       11.    Respondent understands that this Consent Agreement is a public record that  
16 may be publicly disseminated as a formal action of the Board and may be reported as  
17 required by law to the National Practitioner Data Bank and the Healthcare Integrity and  
18 Protection Data Bank.

19       12.    Respondent agrees that the Board will adopt the following Findings of Fact,  
20 Conclusions of Law and Order.

21 ...

22 ...

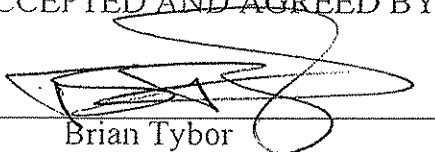
23 ...

24 ...

25 ...

26 ...

1 ACCEPTED AND AGREED BY RESPONDENT

2   
3 Brian Tybor

Dated: 3/3/10

4 Subscribed and sworn to before me in the County of Franklin, State of Ohio,  
5 this 3<sup>rd</sup> day of March, 2010, by Brian Tybor.



7 SEAN McCARTHY  
Notary Public, State of Ohio  
My Comm. Expires Dec. 9, 2014

8   
NOTARY PUBLIC

My Commission expires: December 9, 2014

9 FINDINGS OF FACT

- 10 1. The Board is the duly constituted authority for licensing and regulating the  
11 practice of pharmacy in the State of Arizona.  
12
- 13 2. Respondent is the holder of license number S016773 to practice as a  
14 pharmacist in the State of Arizona.
- 15 3. During all relevant times to these findings, Respondent worked as a  
16 pharmacist at Safeway Pharmacy #1515 in Phoenix, Arizona.  
17
- 18 4. In a written statement dated April 3, 2009, Respondent admitted to  
19 diverting \$400 from Safeway, mostly in the form of fraudulently activated gift cards.  
20 Respondent fraudulently activated Safeway gift cards for his personal use and to give to a  
21 pharmacy technician as consideration for her agreeing to work after her shift was  
22 completed.  
23

24 CONCLUSIONS OF LAW

- 25 1. The Board possesses jurisdiction over the subject matter and over  
26 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

2. The Board may discipline a pharmacist who has engaged in unprofessional conduct. A.R.S. § 32-1927(A)(1).

3. The conduct and circumstances described in the Findings of Fact constitute a violation of A.R.S. § 13-1802(A)(1) (A person commits theft if, without lawful authority, the person knowingly controls another person's property with the intent to deprive that other person of such property). Theft is a crime of moral turpitude. *State v. Superior Court of Pima County*, 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978) (shoplifting involves moral turpitude and bears a close relationship to the common law crime of larceny).

4. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(8) (Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission).

## ORDER

Based upon the above Findings of Fact and Conclusions of Law, Respondent hereby **SURRENDERS** License No. S016773, which was issued to Brian Tybor to practice as a pharmacist in the State of Arizona. The surrender of Respondent's license shall be treated for all purposes, including reporting purposes, as the revocation of his license. Respondent shall not reapply for licensure in the State of Arizona or petition for reinstatement of his Arizona license for a period of at least three (3) years from the effective date of this Consent Agreement.

• • •

• • •

• • •

1 DATED this 22<sup>nd</sup> day of March, 2010.

3 ARIZONA STATE BOARD OF PHARMACY

4 (Seal)

5 By:



6 HAL WAND, R.Ph.  
7 Executive Director

8  
9  
10 ORIGINAL OF THE FORGOING FILED  
11 this 22 day of March, 2010, with:

12 Arizona State Board of Pharmacy  
13 1700 West Washington, Suite 250  
14 Phoenix, Arizona 85007

15 EXECUTED COPY OF THE FOREGOING MAILED  
16 BY CERTIFIED MAIL

17 this 22 day of March, 2010, to:

18 Brian Tybor  
19 5829 Bunton Hush Lane  
20 New Albany, Ohio 43054  
21 Respondent

22 EXECUTED COPY OF THE FOREGOING MAILED  
23 this 22 day of March, 2010, to:

24 Elizabeth A. Campbell  
25 Assistant Attorney General  
26 1275 W. Washington Street, CIV/LES  
Phoenix, Arizona 85007  
Attorney for the Board



#664044